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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,317	11/17/2003	Michael T. Stanhope	45634/319329 (1401)	5107
23370	7590	06/04/2007		
JOHN S. PRATT, ESQ KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET ATLANTA, GA 30309			EXAMINER RUDDOCK, ULA CORINNA	
			ART UNIT 1771	PAPER NUMBER
			MAIL DATE 06/04/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/715,317

Applicant(s)

STANHOPE ET AL.

Examiner

Ula C. Ruddock

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 and 27-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 and 27-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The Examiner has carefully considered Applicant's amendment and accompanying remarks filed March 19, 2007.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

3. Claims 1-24 and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 6,624,096). The Thomas reference teaches a flame resistant textile comprising a body of spun yarns of the type listed in claims 2 and 14 (col. 2, lines 22-33), and filament yarns woven in discrete positions. The filament yarns are aramid filaments, thus reading on claim 1 wherein a polyamide filament is recited. Thus, the limitations of claims 1-3, and 15 are met. The filament yarns are single yarns made of multiple filaments; therefore the limitations of both claims 4 and 5 (and 16-17) are met. Regarding claims 8 and 20, the filament yarns have a denier of 200 to 1500 denier (col. 2, lines 59-60). The Thomas reference specifically discloses that the weight ratio of the spun yarns to multi-filament yarns should range from 85:15 to 92:8 (col 2, ln 15-17) and further discloses that the spun yarns have a much greater presence in the fabric than the multifilament yarns (multifilament yarn is inserted among the spun yarns at an insertion ratio of 1:5 to 1:20; col 2, ln 17-19). The multifilament yarns are being equated to Applicant's "relatively tough yarns". Thomas et al. disclose the claimed invention except for the specific teaching that the yarns do not protrude beyond an outer surface of the fabric body.

It would have been obvious to one having ordinary skill in the art to have the yarns of Thomas not protrude beyond an outer surface of the fabric body, motivated by the desire to create a firefighters' garment that would not easily be caught fire.

Regarding claims 6, 7, 18, and 19, the Thomas reference discloses aramid fibers, and is silent with respect to the materials of claims 6, 7, 18 and 19. Despite the lack of explicit teaching of the claimed materials, PBO, HDPE, aramid, and the like, are known functional equivalents in the art, having similar strength, toughness, and resilience characteristics. It has been held to be within the general level of skill of one in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Therefore, it would have been obvious to select any of the above materials as desired to create a fabric with the desired strength, toughness, and resilience characteristics.

Response to Arguments

4. Applicant's arguments filed March 19, 2007, have been fully considered but they are not persuasive for the reasons set forth. Applicant argues that the yarns of Thomas do protrude beyond an outer surface of the fabric body, based on Figures 1 and 2 of Thomas. This argument is not persuasive because the drawings of a patent are a loose interpretation and one cannot use the drawings as a basis for accuracy. Reference point 14 of Figure 1 is darkened because it is a black multi-filament yarn (col 2, ln 11). However, the drawings do not necessarily show that the yarns protrude from the outer surface of the fabric, and therefore, as shown above, it would have been obvious to one having ordinary skill in the art to ensure that the yarns of a firefighters' garment do

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not protrude from the outer surface so as to create a garment that does not easily get caught on fire.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C. Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

UCR

UCR

Mia Radlock
Via C. Radlock
Primary Examiner
Tech Center 1700